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ABSTRACT

This is the 1970-71 annual report of the NAACP Legal Defense Fund. Summaries of court decisions as a result of Legal Defense Fund (LDF) action are included in the areas of education, employment, legal problems of prominent black individuals, and problems of indigent minorities. Activities of special project areas within LDF are included, as well as a financial report. (Author/DM)

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A REPORT ON SERVICES TO THE PEOPLE OF THE UNITED STATES BY THE

LEGAL DEFENSE FUND

1970 - 1971

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introduction

America was not happy in 1970: The war continued in Indochina, unemployment rose, the stock market declined. Pollution, crime, continuing racial discrimination, filled headlines. Yet, many citizens acted vigorously, and with some success, to make the nation better.

The NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, always on the frontier of the law, always in action, scored notable victories against injustice, which affect the lives of all. In this report of its services to the people of the United States, LDF highlights its accomplishments of the past twelve months and projects plans for the future.

1971 started auspiciously for the Legal Defense Fund with the election of a new President, William T. Coleman, Jr. Succeeding the distinguished Judge Francis E. Rivers, who served as LDF's President for five years, Mr. Coleman summed up his own dedication to LDF: "No duty I have ever performed in my life compares in significance with the honor and responsibility I have assumed as President of the Legal Defense Fund. Americans of all creeds and colors can hold their heads high knowing that our Constitution and Bill of Rights continue to be living documents whose guarantees to every citizen are safeguarded by the Legal Defense Fund — comprised of that small but brilliant group of lawyers so carefully chosen and so intelligently led by Director-Counsel, Jack Greenberg. I shall endeavor, to the best of my ability, to carry on the honorable tradition of service to the people of the United States so ably executed by my predecessors in this post."

Mr. Coleman, a member of the LDF Board of Directors for over a decade and its Vice President since 1965, is an expert in both corporate and constitutional law and for many years has advised staff lawyers in the preparation of important test cases. A graduate, magna cum laude, of Harvard Law School, Mr. Coleman began his career as a law clerk for the late Supreme Court Justice Felix Frankfurter. He is now a partner in the Philadelphia law firm of Dilworth, Paxson, Kalish, Levy and Coleman. He was a senior staff attorney for the Warren Commission which investigated the assassination of President Kennedy and was named a United States Delegate to the 24th Session of the United Nations General Assembly by President Nixon.

The NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC. was established in 1939 by the National Association For The Advancement of Colored People. It has since become separate and distinct from the founding organization. It has its own distinguished Board of Directors, its own policies, staff and budget. Although it has pursued its own route, it retains the founding initials in its name as a reminder of its heritage and as a mark of identity which distinguishes it from numerous other "legal defense funds," which have come into being to emulate it.

education

THE HISTORIC DECISIONS OF 1971: CHARLOTTE-MECKLENBURG AND MOBILE

A unanimous Supreme Court, on April 20, 1971, upheld the constitutionality of busing as a means to dismantle dual school systems and create unitary systems. It also affirmed as constitutional the Charlotte-Mecklenburg school desegregation plan developed by an educational expert and ordered into effect in September, 1970 by Federal District Judge James B. McMillan. This plan eliminates the racial identifiability of every school in the Charlotte-Mecklenburg County school system—the largest in North Carolina—by cross-busing of black and white students from the inner cities to the suburbs and vice versa. Charlotte-Mecklenburg is today one of the most thoroughly integrated systems in the nation in the racial distribution of both students and faculty.

The Court, in the same series of decisions, overturned the existing Mobile, Alabama, desegregation plan, accepting LDF's argument that it did not satisfy constitutional requirements.

In arguments before the Supreme Court in October, 1970, the U.S. Department of Justice joined the Charlotte-Mecklenburg School Board in asking the Court to throw out the plan ordered by Judge McMillan. Legal Defense Fund lawyers, Julius L. Chambers and James M. Nabrit III, referring to carefully documented maps, argued for the plan's retention.

CHARLOTTE — BUSING USED TO SEGREGATE

Charlotte had bused approximately 23,000 of the 84,000 children in the system in 1969-70. A relatively small number of them were black. The average one-way ride for all bused children took one hour and fifteen minutes. Longest trips were made by the youngest children—700 in Head Start programs, mostly black—where round trips ranged from *14 to 78 miles*. Some elementary school children rode *two hours each way* daily. Most white junior high school students were being bused to new schools in outlying districts while their black neighbors walked to inner-city schools. This system of busing succeeded in maintaining many all-black and all-white schools.

Busing for Integration — More Students But Shorter Ride

The plan ordered by Judge McMillan and developed by Dr. John Finger of Rhode Island College, has been in effect since September, 1970. It adds 13,000 children to those being bused. Their average ride is only 35 minutes. The Charlotte-Mecklenburg School Board objected to this plan on the grounds that busing is hard on children and costly to the schools. LDF challenged these objections because abundant evidence pointed to their being simply pretexts to destroy the plan and keep more than half of the black elementary school children in all or almost all black schools. LDF believes that if busing can be used to keep schools segregated, it is infinitely better to use it to achieve integrated schools.

Chief Justice Warren E. Burger, writing for the unanimous Court, stated that ". . . bus transportation has long been a part of all public educational systems and it is unlikely that a truly effective remedy could be devised without continued reliance upon it." In an opinion dealing with another facet of the Charlotte-Mecklenburg case and overlapping into the Mobile

case, the Chief Justice stated, "The importance of bus transportation as a normal and accepted tool of educational policy is readily discernible in this and the companion case (Mobile)."

MOBILE PLAN REJECTED

The Mobile case is a suit filed by LDF in 1963. After five years in the courts, during which time every judicial order was evaded, only 2% of all black school children were in previously all-white schools, with only 6% of black high school students attending school with whites. Mobile had effectively kept integration to token numbers. LDF researchers found that busing was used to maintain segregated schools. For example, 582 black students from one rural area were bused into the center of Mobile to prevent their attendance at white schools near their homes. Portable classrooms expanded facilities at black elementary schools so that black children would not have to attend white schools near their homes.

After the Supreme Court's decision in *Alexander* v. *Holmes County Board of Education* in October, 1969, the Legal Defense Fund went back into court to ask for a plan that would abolish the dual school system in Mobile, as required by law. From a variety of plans put before it, the Fifth Circuit Court of Appeals approved an inadequate one based on the "neighborhood school," which left nine schools 90% or more black and assigned 64% of the black elementary school pupils to them. Our appeal to the Supreme Court, made by Director-Counsel, Jack Greenberg, contended that the Mobile plan did not meet the requirements of the Constitution and that nothing less than total desegregation will suffice, that every black child at every grade in his educational career must be free of assignment to a "black" school. The Supreme Court overturned the Mobile plan and ordered the development of a plan "that promised realistically to work and promised realistically to work now." Chief Justice Burger, for the Court, further stated, "A District Court may and should consider the use of all available techniques including restructuring of attendance zones and both contiguous and non-contiguous attendance zones." In effect, the Court was saying that "neighborhood schools" which perpetuate segregation in a state with a history of segregation, do not meet the requirements of the Constitution.

The issues in Mobile are identical with those in several other cases concerning urban centers in the Deep South. The Court's decision will affect all of them.

EXPECT FASTER INTEGRATION

From the time the Supreme Court heard the arguments in these cases in October, 1970, until it issued its decisions on April 20, 1971, lower courts have, in most cases, refused to rule on school desegregation plans. They were awaiting further clarification and instructions from the Supreme Court. We expect they will now hear arguments quickly and that, by the beginning of the school term in September, 1971, we will have succeeded in persuading them to accept many more constitutional desegregation plans.

Federal Foot-Dragging

After October 29, 1969, when, in the *Alexander* v. *Holmes County* decision, the Supreme Court ruled that every school district had the obligation to operate "now and hereafter only unitary schools," and that this be done "at once," LDF moved rapidly in its approximately 200 school cases which were in various stages of litigation. The intensive and accelerated activity of LDF lawyers, moving cases through the courts, resulted in far more integration in Southern schools than ever before. But we have often been at odds with the Departments of Justice and of Health, Education and Wel-

fare. They have been willing to settle for much less than the Supreme Court has ordered and we are still having to "go it alone" much of the time to satisfy constitutional requirements that no person suffer discrimination because of race.

Our school cases are supervised by Assistant Counsel Norman Chachkin.

Confusing the Public

On October 22, 1970, the Department of Health, Education and Welfare stated that 90.5% of Southern children, black and white, were attending desegregated school systems, a statement which befuddled the record. The word "system" is the key to understanding what the present situation actually is. Within many "unitary systems" black and white children still attend segregated schools. Within many desegregated schools, widespread segregation persists in classrooms, buses and extracurricular activities; and even in desegregated classrooms, some schools have arranged segregated seating. Black teachers, principals, coaches and staff have been dismissed or demoted in massive numbers. In clear violation of law and, at times, Department of Health, Education and Welfare guidelines, assignment of faculty and staff has often been carried out so as to leave schools identifiable as black or white. These facts were revealed in an extensive report which resulted from the monitoring of over 400 desegregated districts. The report, made by LDF together with five other organizations, also revealed that the Departments of Justice and HEW have accepted some desegregation plans which will result in re-segregation and others which unnecessarily permit continuation of segregated schools. The report concluded that, while some school districts had made remarkable progress, the over-all process of desegregation is in imminent danger of failure unless new and stronger policies of enforcement at the federal level are forthcoming.

LDF Protects Rights of Black Faculty

Throughout the year, LDF has been trying to stop the massive lay-offs and demotions of black teachers and principals in schools which have desegregated. We have 35 cases in the courts at present in which we represent dismissed teachers and other black school staff members. We have established the legal principle that if an all-black school is phased out, its black staff cannot simply be fired.

A recent offer of $3.2 million to retrain black teachers in the South has been made by the Government. We contend that it is discrimination rather than inadequate training from which these teachers suffer. Hundreds have been demoted, dismissed outright, denied new contracts, pressured into resigning. Many new teachers have been hired to replace them, few of whom are black. It is estimated that, during the past two years, the number of black principals has fallen from 620 to 170 in North Carolina, and from 250 to between 40 and 50 in Alabama. LDF suggests that the $3.2 million be used by the Government to enforce the law rather than to accept at face value statements that black teachers and principals are untrained.

NORTHERN SCHOOLS

New York City

The Legal Defense Fund has charged, in a suit brought against the New York City Board of Education and the Board of Examiners, that the use of examinations to determine eligibility for supervisory jobs in the New York City school system violates the Constitution and New York law. The case, handled by LDF lawyer, Elizabeth B. DuBois, is now under scrutiny in a federal court. Our suit claims that the system of selection has worked to keep out virtually

all black and Puerto Rican applicants from supervisory jobs. We charged that tests are culturally biased against minorities and that they bear no relationship to the applicant's ability to perform the job. Pending its further consideration, the court has enjoined the Board of Examiners from issuing any more licenses or "lists of eligibles" based on the old system. New York Chancellor of Schools, Harvey Scribner, a defendant in the suit, has declined to defend himself, conceding that the present system is unworkable.

Apart from the ethnic issue, correct answers to some of the questions on the tests are based on what current administrators consider the approved solution to a problem. This tends to reward those who know how to please the system rather than those who may offer innovative and unconventional answers to complex educational problems facing the City's schools.

The recent LDF victory in the U.S. Supreme Court in *Griggs* v. *Duke Power* (see under "Employment", page 12), while based on Title VII of the Civil Rights Act and not on a constitutional violation, has overtones similar to the ones in the New York City case regarding job-related tests.

Buffalo

In a case arising in Buffalo, LDF won a victory from a three-judge Federal District Court which ruled that New York State's so-called Anti-Busing statute of 1969 was unconstitutional. The statute provides that school boards which are appointed, not elected, cannot order integration plans. LDF argued that the statute had altered State law and deprived minority groups of their rights. New York's Attorney General has appealed the ruling to the U.S. Supreme Court.

Mount Vernon

Since 1968, in Mount Vernon, New York, we have represented both black and white parents who are trying to get enforcement of an order by the State Commissioner of Education that elementary schools be paired to achieve racial balance in that community. The State has made funds available for this purpose. The Mount Vernon Board of Education has consistently fought the order. We have won several decisions in this case but each decision is appealed to a higher court by the local Board of Education. These delaying tactics are reminiscent of the early days of school litigation in the South after the *Brown* decision in 1954. The latest appeal by the Board is scheduled to be heard in June, 1971. Meanwhile, Mount Vernon's elementary school children are attending readily identifiable "black" and "white" schools.

Morristown

In Morristown, New Jersey, we are involved in a case which is the reverse of the one in Mount Vernon. Here, for over 100 years, students from both the inner and outer school districts of Morristown have shared the same high school. In 1967, the Board of Education of the outer city school district voted to build its own high school and move its children, mainly white, out of the present well-integrated school. Representing both black and white parents, LDF's attorney, R. Sylvia Drew, has sought to stop that school from being built because it would lead to the segregation of an integrated school. The New Jersey Commissioner of Education, although agreeing with the allegation of the complainants, has entered an order stating that he does not have the power to stop the construction of the new high school. We have appealed that order to the New Jersey Supreme Court.

THE FUTURE COURSE

Now that the Supreme Court has spoken with such clarity on the range of techniques that

may be employed to desegregate thoroughly, the Legal Defense Fund is moving vigorously to push for the total dismantling of the dual school systems of the South and, at the same time, is carefully preparing its attack upon segregation in medium-size cities of the North where segregated schools are often the result of a history of housing restrictions imposed on blacks. We have over 200 current cases dealing with education.

In the process of desegregation, one of our points of emphasis will be to see that it does not, as it has so much of the time, put the burden solely upon black students. We shall insist upon two-way busing, if that is appropriate, to achieve school integration. And we shall work for a quality of integration which preserves the rights and dignity of black children, teachers and supervisory staff, and, thereby, improves the education of all children.

The Supreme Court has made clear in its latest decisions its insistence that this nation must abide by the Constitution and must eliminate all vestiges of segregated education imposed by local law and custom. The Legal Defense Fund intends to see the Court's words translated into affirmative action across the land.

employment

"Last hired, first fired," remains a truism. In a year of high unemployment, black workers, many of whom were hired in efforts by some industries to reverse former discriminatory practices, are the first to go. Today the rate of unemployment for Negroes is considerably more than twice that for whites. But that is only one side of the coin—discrimination is the other.

Seven years ago, the U.S. Congress specifically outlawed discrimination in employment on the basis of race. Yet, in personnel offices and union hiring halls all over the United States, this law is broken daily. And black workers with long years of service to an employer find that their color prevents advancement to better, higher paying jobs.

LDF currently has over 100 job discrimination suits in various stages of litigation — more than double the number of such cases brought by the U.S. Department of Justice. These suits attack what we believe to be policies and practices which are widely used and have a discriminatory effect.

SUPREME COURT RULES ON JOB TESTING

The first two cases under Title VII, the equal employment provision of the 1964 Civil Rights Act, to reach the Supreme Court of the United States were brought and won by the Legal Defense Fund in the current session of the Court. In one case, *Griggs* v. *Duke Power,* argued by LDF Director-Counsel, Jack Greenberg, the Court ruled that tests for employment or promotion must be related to the job in question and that the burden to prove that they are so related rests with the employer. The Duke Power Company's test for black laborers working outside the plant, who applied for promotion to work indoors as coal handlers, includes such irrelevancies as being able to distinguish between "pretentions" and "pretentious," "moral" and "morale," and one question which requires knowledge of the vernal equinox. The Supreme Court's decision in this case is causing much self-examination among corporate personnel directors and publishers of tests. Said the *New York Times* of this decision, "Over the long run . . . the decision could mean greater job opportunities for minority workers, with impact being felt in union hiring halls and government offices as well as in private industry."

SEX DISCRIMINATION OUTLAWED

In the other case, *Phillips* v. *Martin Marietta,* argued by First Assistant Counsel, William L. Robinson, the Supreme Court held that it was unlawful to refuse to hire a woman with preschool age children unless the same standard was applied to men in similar situations. Mrs. Phillips, a white mother of seven children, was refused employment at the Orlando, Florida plant of the Martin Marietta Corporation, because the company had a policy of not hiring mothers of young children. This decision was the first on sex discrimination issued by the Supreme Court under Title VII of the 1964 Civil Rights Act. The decision has significant relevance for black women and is a step forward towards achieving fair employment practices for all women.

OTHER JOB VICTORIES

Other LDF victories in employment cases this past year include a decision by the Fifth Circuit Court of Appeals stating that, where policies of racial discrimination are open and

notorious, blacks do not have to go through the demeaning experience of applying for jobs. They can now go directly to the Federal Court and claim discrimination.

Another "first" was the Eighth Circuit Court of Appeals ruling that evidence, based solely on statistics which clearly show that racial discrimination in employment exists, is sufficient proof of its existence, as a matter of law. The fact that the courts will now accept statistics as a basis on which to rule, facilitates our ability to litigate large issues of discrimination in employment.

Decisions awarding counsel fees to plaintiffs who have suffered employment discrimination were won and other cases further clarified procedures under Title VII.

BREAKING BUILDING-TRADES BIAS

The construction industry, both employers and unions, is under attack by LDF in Newark, New Jersey. A plan, similar to the Administration's much heralded "Philadelphia Plan," is being challenged as unconstitutional by both contractors and unions. The plan orders contractors to hire blacks on federal construction projects and insists that unions accept black workers as members and include blacks in their apprenticeship program. LDF claims that Executive Order 11246, originally issued by President Franklin D. Roosevelt and broadened under each President since, requires affirmative action on the part of employers and unions to hire members of minority groups when federal funds are involved. Thus far, LDF's argument has been upheld by the Federal District Court.

Also pending are similar suits brought by LDF against the State of New Jersey, arguing that under the Fourteenth Amendment, the state has a constitutional obligation to assure that no one is denied employment because of race in state-funded programs.

BLACK RIGHTS IN UNION MERGERS

The current docket includes suits dealing with problems arising from mergers of black and white unions. These cases contend that blacks should have leadership representation in the merged unions. Blacks now are treated as new members and are stripped of the grievance protection which they enjoyed under their separate union.

The docket also includes cases involving testing procedures similar to those in *Griggs* v. *Duke Power*, and others asking for counsel fees for plaintiffs and seniority rights in job transfers. Other cases seek answers to questions involving appropriate remedies to the findings of employment discrimination and how far a District Court can go to order relief.

Said LDF lawyer, William L. Robinson, who heads the employment litigation section, "From May, 1970, to June, 1971, we will have tried as many cases of employment discrimination under Title VII of the 1964 Civil Rights Act as we did in the preceding four years." We hope to continue at this accelerated pace in the future. However, because funds for additional staff lawyers are in short supply, we are as much deterred from pursuing rapid and effective implementation of the law by lack of manpower as we are by the traditional slowness of the litigation process.

freedom of the press

Earl Caldwell, a black reporter for the *New York Times*, won a landmark decision for freedom of the press. The U. S. Department of Justice had subpoenaed him to testify in a secret Grand Jury proceeding and to produce tape recordings and notes of interviews with Black Panther leaders. LDF, which previously had been consulted by Black Perspective, an association of black journalists concerned about this very problem, was asked by Caldwell to represent him personally. LDF lawyers moved to set aside the subpoena, declaring that Caldwell would be destroyed as a reporter: no radical would trust him again. The district court ordered him to testify. Caldwell again refused and was cited for civil contempt. Arguing on appeal, LDF's Anthony Amsterdam, professor of law at Stanford University, persuaded the U. S. Court of Appeals for the Ninth Circuit that before the government could destroy Caldwell's effectiveness as a newsman, it would have to show an overwhelming need to get *his* testimony specifically. The appeals court agreed that the Justice Department had laid no such foundation and could not make Caldwell appear. The Court said "If the Grand Jury may require [Caldwell] to make available to it information obtained by him as news gatherer, then the Grand Jury and the Department of Justice have the power to appropriate his investigative efforts to their own behalf, converting the reporter into an investigative agent of the government." This was the first time a Federal Court had supported a reporter's refusal to testify. The U. S. Department of Justice has applied for a Supreme Court hearing.

The *New York Times* stood by Caldwell throughout the ordeal, but many legal experts thought Caldwell would have no choice about testifying, until LDF lawyers developed their legal argument.

"the fight of the century"

In 1967, the New York State Athletic Commission had denied Muhammad Ali a license to fight, contending that its duty was "to maintain the integrity of boxing in this state." Other state commissions followed New York's lead and Ali was unable to fight professionally anywhere.

The Legal Defense Fund took the case when Ali was unable to earn a living as a boxer. Because he asserted issues of racial discrimination, the case took on added significance. Whether he received fair treatment would help determine for many black citizens the law's credibility as an instrument for social change. After Ali began to fight once more, he reimbursed LDF for its expenses in his litigation. However, we may not and do not charge legal fees.

LDF lawyers, Michael Meltsner and Ann E. Wagner, probed the New York Commission's files and found that licenses to fight in that State had been issued to convicted armed robbers, rapists, men with military offenses on their records, and even a murderer. Muhammad Ali had refused, on religious grounds, to be drafted. He was denied a license to fight because of that. Federal Judge Walter R. Mansfield ordered Ali's license restored after hearing the evidence. It had taken painstaking work over a long period of time by LDF lawyers to develop the facts in this case. It was clear that the Commission had discriminated against Muhammad Ali and was punishing him because of his political and religious beliefs.

With his license reissued, Muhammad Ali fought the "fight of the century" against Joe Frazier and lost honorably, in a 15-round fight, the World's Heavyweight Championship title, which previously had been his and had arbitrarily been taken from him.

the national office for the rights of the indigent

The National Office for the Rights of the Indigent (NORI), the poverty law program of the Legal Defense Fund, is devoted to developing law for the poor of all races, colors and creeds.

Since 1967, through its research and litigation program, NORI has won landmark decisions that serve to build a foundation of new law for those who are denied justice because of their poverty. In a wide-ranging program involving land use, urban renewal, housing, municipal services, welfare, education, migrants, consumer fraud, prison reform, capital punishment, and other areas affecting the daily lives of poor people, NORI works for change through law. It is helping American Indians, Spanish-speaking Americans, and poor whites as well as blacks.

Some typical NORI cases follow:

MUNICIPAL SERVICES

Shaw, Mississippi

In a decision that opens up for constructive legal attack a broad area of discrimination hitherto untouched, the U.S. Fifth Circuit Court of Appeals ruled that the town of Shaw, Mississippi, must provide services on a racially equal basis. The pioneering suit in Shaw developed by NORI-LDF lawyers, Jonathan Shapiro and Melvin Leventhal, and brought on behalf of Andrew Hawkins, a black carpenter, held that the town draws a line between its black and white residents. Where the black section begins, paved roads end and so do drainage sewers, adequate lighting and water supply. The Court's decision in this case has application to thousands of Shaws across the nation. It will affect both city and rural slums.

Lackawanna, New York

In another landmark decision won by NORI, the federal courts have forbidden the City of Lackawanna, New York, to interfere with a proposed low-income housing development which black citizens of the City desired to build in a white section of Lackawanna. LDF-NORI attorneys, Michael Davidson and Jeffry A. Mintz, representing the black citizens, were joined in the case by the Catholic Archdiocese, which agreed to sell the land, and by the U. S. Department of Justice. The district judge found that the City's objections to the housing project were subterfuges and that racial discrimination and racial segregation were the real motives. The City lost its appeal to the United States Court of Appeals for the Second Circuit and the Supreme Court refused to review the case.

These victories are a beginning in developing law to assure that the black and the poor are not made to suffer discrimination in municipal services.

LAND USE AND HOUSING

West Virginia

From New York, through Pennsylvania, south to West Virginia, North Carolina, Georgia and Alabama, and across to California, the Legal Defense Fund's cases seek to stop new highways from dispossessing the poor who live in their path and to broaden housing opportunities for people with low income. Jack Greenberg for NORI, argued before the U. S. Supreme Court

on March 22, 1971, in *Triangle Improvement Council* v. *Ritchie,* a case in which we represent black residents of the "Triangle" neighborhood in Charleston, West Virginia. Their homes were selected to be leveled to make way for a six-lane highway. Housing is scarce in Charleston, especially for blacks who are kept out of many neighborhoods. We have asked the Court to rule that in this situation, state and Federal officials are barred, by a 1968 act of Congress, from approving construction plans that would displace people from their homes unless specific assurances are given that safe, sanitary and decent housing will be given to the relocatees.

The Government contends that since routing through "Triangle" was approved in 1967, before Congress acted, the law does not apply. LDF has argued that, as long as homes have not yet been leveled, the 1968 law should apply to projects authorized before then. We await the Court's decision. It will affect similar cases we are pressing in lower courts.

Huntington, New York

In *English* v. *Town of Huntington, New York,* we represent low income black residents of Huntington whose homes are threatened by urban renewal and other city sponsored programs which make no provision for relocating them. This suit also seeks to invalidate the use of zoning laws as a means to deny low-income people the benefit of residence in certain areas, in this case a suburban community adjacent to New York City.

Our major objective in the land use and housing litigation is to establish rules of law which assure that urban planning serves, rather than disserves, the poor.

ADMINISTRATION OF JUSTICE

Prison Reform

Readers of "Papillon," the recent best seller, learned in excruciating detail the horrors of the pre-World War II French penal colony system. Probably no American reader could conceive of *his* country countenancing prison conditions even approaching those of which he read. Unfortunately, he would be wrong. A few hours of reading through the Legal Defense Fund cases on prison reform would reveal conditions more like fiction emanating from a sadistic mind than from the American system of jurisprudence and the condition of its prisons.

In a landmark decision won by LDF in a case where we represented the prisoners of the Lucas County Jail in Toledo, Ohio, U. S. District Judge Don J. Young referred to "a refined sort (of punishment) much more comparable to the Chinese water torture than to such crudities as breaking on the wheel." Judge Young described the Toledo prison as "a local jail at (its) worst." . . . "When the total picture of confinement in the Lucas County Jail is examined, what appears is cramped and overcrowded quarters, lightless, airless, damp, and filthy with leaking water and human wastes, slow starvation, deprivation of most human contacts, except with others in the same sub-human state, no exercise or recreation, little if any medical attention, no attempt at rehabilitation, and for those who in despair or frustration lash out at their surroundings, confinement, stripped of clothing and every last vestige of humanity, in a sort of oubliette" (secret dungeon).

Ruling that conditions in the Lucas County Jail constitute "cruel and unusual punishment," a violation of the Constitution, Judge Young held that the Federal Court has jurisdiction over what normally would be a State matter. In his opinion the Judge wrote ". . . Confinement as it is handled in the Lucas County Jail denies them (prisoners) equal protection of the law."

. . . "Obviously if confinement in the Lucas County Jail is a cruel and unusual punishment forbidden to be employed against those who are in jail to be punished, it is hard to think of any reason why it should be permitted for those who are in jail awaiting trial and are, according to law, presumed to be innocent of any wrong doing. For centuries under our law, punishment before conviction has been forbidden."

Little Rock, Arkansas

Our prison reform cases reach every section of the nation and are filled with unbelievable horror. In a case handled by former LDF intern John Walker, where we won an order closing the Pulaski County Jail in Little Rock, Arkansas unless conditions improved, the record discloses that men awaiting trial were sometimes kept for four or five days in "The Hole" a 10' x 14' cell, in darkness, with no furniture or plumbing, no ventilation, no heat, and only a mattress to keep them warm. Such conditions are suffered by those too poor to put up the bail which would free them while they await trial. In his decision, Federal District Judge J. Smith Henley stated that, for the ordinary convict, a sentence to the Arkansas Penitentiary, "amounts to a banishment from civilized society to a dark and evil world completely alien to the free world — a world that is ministered by criminals under unwritten rules and customs completely foreign to free-world culture." An inmate, "however cooperative and inoffensive he may be, has no assurance whatever that he will not be killed, seriously injured or sexually abused," the Judge wrote.

Pre-Trial Detention and Prisoners' Rights

We are involved in securing the whole range of prisoners' rights: challenging conditions of pre-trial detention where persons awaiting trial are treated worse than convicted prisoners merely because they cannot afford bail (52% of all prisoners currently held are in this category); imposition of disciplinary punishment of prisoners without essential procedural safeguards and without standards to guide prison officials; cruel and inhumane conditions of solitary confinement; the rights to religious freedom, to vote, to engage in political activity, to petition for redress of grievances; plus the rights of freedom of speech and press, freedom of communication, particularly with counsel, without unnecessary censorship. Assistant Council Stanley Bass, heads the LDF prison reform litigation.

An enlightened and civilized society must make every effort to rehabilitate its criminals. It should accord them the dignity of treating them as human beings, entitled to a second chance. Conditions in too many prisons across the United States are designed to make embittered, vengeful repeaters of those who have once broken the law. We are fighting to change those conditions for the guilty as well as to assure that those who are innocent are given an opportunity to prove their innocence and are treated with justice while they are awaiting trial.

Capital Punishment

Freddie Pitts and Wilbert Lee have been on Death Row for seven years in northern Florida, convicted of a murder they did not commit. Another man confessed to that crime after Pitts and Lee had been convicted. Our lawyers have since been in the Courts, stopping the execution of these men and fighting to win a new trial for them. Finally, on April 15, 1971, Florida's Attorney General asked the Florida Supreme Court to grant the condemned men a new trial in a "confession of judgment" in which the Attorney General stated that the State's Prosecutor had suppressed evidence in the original 1963 murder trial by "oversight, inadvertence or neglect." The Florida Supreme Court has

granted a new trial and the two innocent men, who have been saved from execution but for seven years have suffered the anticipation of it, will now have a chance to prove their innocence.

This is one of over 400 capital punishment cases in which we are directly involved. Indirectly, our cases affect the remainder of the 630 men on Death Row. With a minimum of resources but with a far-reaching legal strategy developed by LDF lawyers Anthony Amsterdam and Jack Himmelstein, we have effectively stopped executions of all condemned prisoners since June, 1967.

In 1968, LDF succeeded in getting the U. S. Supreme Court to review the case of *Maxwell* v. *Bishop*, in which we raised two critical capital punishment issues: The constitutionality of unlimited discretion in the choice between the penalties of life and death, and the constitutionality of the single-verdict capital trial.

Anthony Amsterdam argued the *Maxwell* case in the Supreme Court in 1969 and again in 1970. We finally won the case but the Court left the major constitutional issues unresolved. There were only eight justices eligible to hear arguments on the *Maxwell* case. But the Court acceded to our urgent request that it grant review in other cases raising the same constitutional issues. The Court has heard two such cases and now we await its decision.

Capital Punishment Conference

Having successfully prevented executions in the United States for nearly four years, we are determined to avoid a blood bath of horrifying proportions if the Supreme Court should uphold the death penalty. Whatever the outcome of the cases, we have prepared for a National Capital Punishment Conference to be held within ten days of the Court's decision, which will bring together the key people involved in the effort to abolish capital punishment. And we have ready a detailed legal program which we are prepared to implement immediately if the Court's ruling should be unfavorable. We also have a plan to implement a favorable decision of the Court. We believe we can head off mass executions and that our actions will move us closer to the abolition of the death penalty.

Spanish-Speaking Americans

We represent the parents of Spanish-speaking children of Santa Ana, California, in a class action which challenges, as unconstitutional, the procedures for determining that Spanish-speaking children are mentally retarded. We claim that children so classified are in most cases not mentally retarded but suffer solely from a language barrier.

Migrant Workers

In March, 1971, we won a victory in a case where a newspaper reporter was kept from entering a migrant farm laborers' camp in upstate New York and was charged with trespass when he attempted to speak with the laborers. The court declared that farm laborers have a constitutional right to access to information and that visitors, such as news reporters, cannot be barred from the camp if their purpose is to gather or disseminate news.

The refusal of farmers to permit outsiders to visit labor camps not only has prevented exposure of unlawful conditions; it has deprived the migrant workers of knowledge of or access to facilities such as civic groups, social agencies or doctors in nearby communities.

In a Florida migrant workers' case, we are suing sugar cane growers and local enforcement officials in behalf of 40 Jamaican cane cutters who were arrested, some jailed overnight, and all eventually flown back to Jamaica, because they protested that they were receiving wages below the Federal-required minimum wage.

AMERICAN INDIANS

Fishing

LDF-NORI represents the Yakima Indians against officials of the State of Oregon, seeking to restrain the State from imposing undue restrictions on Indians fishing in the Columbia River. The Indians' right to fish in the Columbia River derives from a treaty with the United States and the Government has filed a companion suit with us against the State. We won this case when the court ruled that Oregon's restrictions violated treaties and ordered that Indians be accorded a larger share of the catch. But State authorities have failed to follow the court's order. We have therefore had to file another motion to press the State to obey the court.

School Lunches

In another case, we represented indigent American Indians in Oklahoma, seeking to stop discriminatory exclusion of needy Indian children from the public school lunch program on the basis of race. After our case was filed, a Government investigation of the charges resulted in the appointment of a new school superintendent and today the children are being fed on an equal basis.

Preservation of the Indian land base is an issue of the highest priority with Indian citizens. In addition to cases already developed, we are engaged in research concerning charges of unscrupulous alienation of Indian land.

Besides research and litigation on behalf of Indians, NORI lawyers have frequently been called upon by Office of Economic Opportunity lawyers practicing on or near reservations, for advice in matters of Indian law.

division of legal information and community service

Since 1967, when it was established, the work of the Division of Legal Information and Community Service, headed by Jean Fairfax, has undergirded a substantial part of the litigation work of the LDF and its companion organization NORI. The Division informs the poor and the black of their rights and assists them in obtaining equality of treatment. It focuses on the social and economic structure of the communities in which it works and on the institutions, national and local, which create and support racist attitudes and discriminatory practices. It acts as a watchdog of federal agencies which have a public mandate to enforce laws intended to meet the needs of racial minority groups and the poor. In cooperation with other organizations, it has monitored and reported its findings on such federal programs as the National School Lunch Program ("Their Daily Bread"), Title 1 of the Elementary and Secondary Education Act ("Title 1 of ESEA, Is it Helping Poor Children?") the Emergency School Assistance Program and the Status of Southern School Desegregation in the South in 1970.

AMERICAN INDIAN CHILDREN

The Division's latest study, "An Even Chance," which was made in cooperation with the Harvard Center for Law and Education, appeared in January, 1971. It concerns the use of federal funds for Indian children in public school districts. This study has given LDF an opportunity to develop a close working relationship with Indian citizens and has deepened our understanding of what equal educational opportunity means to the first Americans. The impact of this report on Governmental agencies responsible for the education of Indian children has been stunning. The facts revealed in the study present a shocking record of disregard of the rights of Indians guaranteed them by treaties, laws passed by Congress, and laws of individual states. The report opens the way, based on facts, for action to correct wrongs inflicted upon Indian children and their parents.

JOBS FOR BLACKS

The Division's continuing effort to eliminate discriminatory employment practices in the South and open the road for agricultural workers, displaced by technology, to find jobs, has already resulted in training and hiring programs in two major industries of the South: textiles and pulp paper. However, much remains to be done in those industries and the Division is pressing for affirmative action, uniformly implemented, which will eliminate the patterns of discrimination revealed by its research.

SCHOOL FUNDS — FOR THE POOR?

In education, the Division keeps a close watch on the use of funds which Congress has earmarked specifically for the use of children of low-income families. After publication of its study "Title 1 of ESEA, Is it Helping Poor Children?" which documented the misuse of those federal funds, the Division's staff set up programs to assist local citizens in exposing violations of Title 1 in their communities. These aware citizens are now able themselves to insist upon official audits by HEW, which is responsible to Congress for the proper use of Title 1 funds.

"THEIR DAILY BREAD"

After the publication of "Their Daily Bread," the study of the National School Lunch Program, Congress reviewed the law and decided that it should be strengthened. The new school lunch law passed by Congress in 1970 incorporates practically all of the recommendations made in "Their Daily Bread." If this new law is fully implemented, 10,000,000 needy children will benefit. The Division continues to monitor this program.

The Division's staff helped provide the community analysis in preparation for the Charlotte-Mecklenburg case. It also secured the outstanding educational expert, later appointed as the court's own expert, who fashioned the desegregation plan which United States District Judge McMillan ordered and which the United States Supreme Court has upheld.

COMMUNICATIONS CHALLENGED

In cooperation with the Office of Communications of the United Church of Christ, the Division is challenging the license renewal of radio and television stations which violate the Federal Communications Commission in programming and employment. Focusing on Memphis, Tennessee, as a pilot project, the Division organized the Memphis Coalition for Better Broadcasting which challenged the license renewal of three local television stations after monitoring their programs. As a result, two of the stations have negotiated agreements to hire black staff members and to sponsor programs which reflect the interest of the black community of Memphis. Building on this experience, the Division is preparing challenges in other communities which violate FCC rules. It is attempting, at the same time, to interpret to national leaders of the broadcasting industry the role which the mass media can play in creating both the climate and the information needed to bring black and white together in our nation.

SCHOOL INTEGRATION — LOOKING NORTH

The Division is playing a major role in preparing LDF's attack upon northern school desegregation. It will be providing the facts for community action to desegregate schools and, if necessary, for the purpose of litigation.

higher education program

THE HERBERT LEHMAN EDUCATION FUND

Established in 1964 to provide scholarships for black students entering newly desegregated state colleges of the South, the Herbert Lehman Education Fund continues to make it possible for Southern black students to attend the leading public colleges and universities in their states.

In the 1970-1971 academic year, 158 students out of a total of 1,067 who applied, were awarded scholarships to state colleges in 14 states and the District of Columbia. A total of 622 students have been helped since the inception of the Fund.

The higher education program is administered by Dr. John W. Davis, a former president of West Virginia State College, who has also served the U. S. State Department on special diplomatic assignments.

THE LEGAL TRAINING PROGRAM

The Board of Directors of the Legal Defense Fund resolved in 1970 to take decisive action toward correcting the critical shortage of black lawyers in our nation, now but one percent of the American bar. The lack of indigenous and friendly lawyers has for too long crippled a people striving to reach upward out of poverty and ignorance. The Board voted to undertake a program which will add 1,500 practicing black lawyers within the next seven years. Because for the past seven years the Legal Defense Fund has operated a complete four-pronged Legal Training Program on a small scale, experience has prepared us to carry out a huge expansion.

The Program

1. Scholarship aid to 300 students each year for the full three years of law school. Over seven years, this Program will have graduated 1,500 lawyers.

2. Summer employment for law students at Legal Defense Fund offices. Students will work with seasoned lawyers involved in precedent-setting cases and will learn something of the intricacies of constitutional and business law most relevant to the black community.

3. A one-year postgraduate internship at Legal Defense Fund offices. Over a five-year period we will train some 200 top law school graduates in human rights law. The postgraduate curriculum is designed to give the interns practical experience under close supervision in fact gathering and analysis, legal research and writing, oral examination and advocacy. It will involve them in a broad spectrum of cases affecting large public issues.

When they complete their postgraduate year, each lawyer will be aided financially in starting his own practice in an area where his expertise is critically needed.

These well-trained lawyers will be magnets attracting other young black law school graduates to work with them.

4. Three Human Rights Law Institutes each year, under the direction of Michael Sovern, the Dean of Columbia University School of Law, and with a distinguished faculty drawn from the nation's leading law schools. Unique in the nation, these Institutes are the sine qua non for the human rights lawyer.

1970 Progress Report

In the first year of the expanded program, we fell short of our 300-student goal because of insufficient funds. We are currently aiding 212 students: 170 in their first year and 42 in their second or third year of law school.

Twelve interns are presently completing their postgraduate year of training. They will begin law practice this year in communities where there are either no black lawyers or where a severe shortage of lawyers exists in relation to the black population. Each of these twelve lawyers will receive diminishing financial assistance over the next three years.

Summer jobs were filled; Human Rights Law Institutes brought lawyers, interns and law students—black and white—together from across the nation. Penetrating analyses of current litigation and informed discussions of future actions made up the curriculum.

The Program is working.

the justice fund — a reserve and bequest program

The Justice Fund, established in 1970, is designed to receive:

1. All bequests to LDF, not otherwise designated.
2. Special endowment gifts.

It is essential that the Legal Defense Fund have a reserve upon which it can call if expenses in any one month exceed income. This assures an even flow of work, uninterrupted by what may be a temporary financial crisis. Also, if fund raising efforts should suffer as a result of economic conditions, as they did in 1970, the Justice Fund will provide the emergency money to keep LDF operating.

Endowment gifts to the Justice Fund of stocks and bonds, as well as cash, are solicited.

Bequests can keep alive the interest of contributors in building American justice through the Legal Defense Fund. A simple form of bequest follows:

FORM OF BEQUEST

I give and bequeath .....dollars to THE NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC., a corporation organized under the laws of the State of New York with headquarters located at 10 Columbus Circle, New York, N.Y. 10019, to be used for such purposes as may be determined by the Board of Directors.

statement of income and expenditures

(Pre-audit)

Year ended December 31, 1970

INCOME:			
General Contributions	$2,113,200.38		
Bequests	44,803.67		
Administration of Justice Study	66,667.28		
Legal Training Program	433,500.00		
Herbert Lehman Education Fund	211,089.31		
National Office for the Rights of the Indigent (NORI)	256,249.50		
Miscellaneous	26,939.28		
TOTAL			$3,152,449.42
EXPENDITURES:			
Cost of Legal Action			
Staff	$ 586,610.99		
Direct Costs of Litigation	817,574.36		
Operating Expenses	288,485.33		
National Office for the Rights of the Indigent (NORI)	247,959.81		
		$1,940,630.49	
Legal Training Program		369,668.67	
Division of Legal Information and Community Service		191,205.59	
Campaign Expenses		484,478.43	
Administration of Justice Study		104,773.35	
Non-Legal Research and Public Information		128,302.96	
Herbert Lehman Education Fund		295,312.31	
TOTAL			$3,514,371.80
*Excess (Expenditures)			*($361,922.38)

*NOTE: Funds from a deferred bequest reserve totaling $421,000 received in prior year, set aside for such emergency purposes (The Justice Fund), have been used in meeting above excess expenditures.

financial needs—1971

The economic difficulties of 1970 resulted in a considerable shortage of revenue for the Legal Defense Fund. Although we received somewhat more in contributions than in prior years, our multi-faceted program required expenditures above our income. Fortunately, a small reserve sustained us. But that reserve has been badly depleted. In 1971, we will require $4,952,500 to meet the needs of our program, as outlined below.

TOTAL FINANCIAL NEEDS
OF THE
NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC. — 1971

Cost of Legal Action	$1,660,000
Division of Legal Information & Community Service	490,000
National Office for the Rights of the Indigent	340,000
Legal Research	200,000
Non-Legal Research and Public Information	100,000
Undergraduate Scholarships-Southern State Colleges	200,000
Legal Training Program	1,472,500
Campaign Expenses	490,000
Total	$4,952,500

Respect for law and faith in its ability to serve as man's best tool in building an orderly, constantly advancing society, is today being questioned by many. Injustice and abuse of the law by those who are charged with enforcing it are now more visible and, therefore, more unacceptable to most Americans. Nothing is of greater importance to all our citizens, old and young, than to see justice done in our land. The Legal Defense Fund exists for that purpose.

This report on our services to the people of the United States is presented to those who have paid for the work herein outlined—the work of building American justice. We honor their faith in our ability to bring nearer the day when "Equal Justice Under Law" will be more than the words which appear above the entrance to the Supreme Court building. We pray they will keep that faith and continue to sustain our efforts by their substance.

Contributions are tax deductible. The NAACP LEGAL DEFENSE AND EDUCATION FUND, INC. has been classified under the 1969 Tax Reform Act as not being a private foundation.

officers

MAY 201971

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**First Assistant Counsel during 1970*

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*left during the year
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Robert Anderson
Houston, Tex.
Fred Bank
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Morehead City, N.C.
Robert Belton
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Iris Brest
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